

DECISION
OF THE GOVERNMENT OF THE RUSSIAN FEDERATION
NO. 184 OF FEBRUARY 16, 1999
ON THE PECULIARITIES OF DETERMINING A MATERIAL DAMAGE
OF A BRANCH OF THE RUSSIAN ECONOMY WHEN A FOREIGN STATE (AN
ALLIANCE OF FOREIGN STATES) SUBSIDIZES GOODS IMPORTED TO THE RUSSIAN
FEDERATION AS WELL AS THE AMOUNT OF THE SUBSIDY

For the purpose of implementing Article 13 of the Federal Law on Measures Aimed at Protecting the Economic Interests of the Russian Federation in Foreign Trade in Goods the Government of the Russian Federation hereby resolves:

To endorse the attached Regulations on the Peculiarities of Determining a Material Damage of a Branch of the Russian Economy when a Foreign State (an Alliance of Foreign States) Subsidizes Goods Imported to the Russian Federation as Well as the Amount of the Subsidy.

Chairman
of the Government
of the Russian Federation

Ye.Primakov

Regulations
on the Peculiarities of Determining a Material Damage
of a Branch of the Russian Economy when a Foreign State
(an Alliance of Foreign States) Subsidizes Goods Imported
to the Russian Federation as Well as the Amount of the Subsidy
(endorsed by the Decision of the Government of the Russian Federation
No. 184 of February 16, 1999)

1. The present Regulations establish the peculiarities of the determination of a material damage or the menace of its being inflicted to a branch of the Russian economy in the event when a foreign state (an alliance of foreign states) subsidize goods imported to the Russian Federation as well as the peculiarities of determining the amount of the subsidy for the purpose of setting compensation duty rates.

2. In the present Regulations there are used the basic terms defined by the Federal Law on Measures Aimed at Protecting the Economic Interests of the Russian Federation in Foreign Trade in Goods.

Procedure for Determining a Material Damage to a Branch
of the Russian Economy when a Foreign State (an Alliance of Foreign
States) Subsidizes Goods Imported to the Russian Federation

3. The determination of a material damage shall be done in the course of an investigation conducted by the Ministry of Trade of the Russian Federation and it shall be based upon the results of the analysis of:

a) the volume of the imports of a good in the production or exports of which subsidies of a

foreign state (an alliance of foreign states) have been used (hereinafter referred to as "subsidized imports");

b) the effect of the subsidized imports of the good to the price for similar or directly competing good (hereinafter referred to as "similar good") on the domestic market of the Russian Federation;

c) the effect of the subsidized imports of the good to the branch of the Russian economy.

4. When the analysis of the volume of the subsidized imports of the good is performed it is necessary to find out if a significant increase has occurred in the subsidized imports (as absolute and relative values) in respect to the level of the output or consumption of a similar good on the domestic market of the Russian Federation.

5. When the analysis of the effect of the subsidized imports of the good to the price of the similar good on the domestic market of the Russian Federation is performed one of the following factors is to be taken into account:

a) whether the prices for the subsidized imported good are significantly below the prices for the similar Russian good;

b) whether the subsidized imports of the good has lead to a significant decrease in the prices for the similar Russian good on the domestic market of the Russian Federation or has impeded the increase in such prices which would have otherwise occurred if there were no subsidized imports.

6. The following shall be determined when the effect of the subsidized imports of goods on the branch of the Russian economy is analyzed:

a) actual or possible decrease in the sales volume, profit, output volume, market share, labor productivity, return on capital (capital investment), production facility use factor;

b) the factors affecting the prices on the domestic market of the Russian Federation;

c) actual or possible negative effect of the subsidized imports of the good to cashflow, goods stock, employment level and wages level, production growth rate, a possibility of increasing current assets and capital investment in the respective branch of the Russian economy.

When the imports of agricultural products are subsidized it is also necessary to determine whether the subsidized imports have lead to a need to expand the state programs aimed at supporting the production of similar Russian goods.

7. For the purpose of making a decision as to the availability of a material damage to a branch of the Russian economy a positive statement according to the results of the analysis as specified under Items 3, 4 and 5 of the present Regulations is mandatory. In such a case the list of the factors scrutinized in the course of the analysis can also include other indicators.

8. Should the subject matter of an investigation be subsidized imports of one and the same good from several foreign states, the effect of such imports to a branch of the Russian economy shall be assessed on an aggregate basis if it has been discovered that:

the amount of the subsidy in each of the countries for this good makes up over one per cent of the value thereof and the volume of the subsidized imports from each of the countries to the Russian Federation makes up over three per cent of the total volume of the imports of such a good to the Russian Federation;

the appraisal of the substantial damage on an aggregate basis is admissible with the account taken of the conditions of the competition between such imported good and the conditions of competition between the imported good and a similar Russian good.

9. The Ministry of Trade of the Russian Federation shall find out if there exist or not exist a causation relationship between the subsidized imports and the material damage to the branch of

the Russian economy determined by means of the indicators specified under Items 3, 4 and 5 of the present Regulations. The discovery of such a causation relationship must be based on the analysis of the whole volume of information relating to the investigation.

10. When the causation relationship is being looked for between the subsidized imports and the material damage to the branch of the Russian economy it is also necessary to take into account any other known factors that negatively affected the state of the branch of the Russian economy simultaneously with the subsidized imports including but not limited to:

- a) the volume of and prices for similar non-subsidized imported goods;
- b) changes in the consumption pattern;
- c) the consequences of restrictive trade practices and competition between foreign and Russian producers of the good;
- d) changes in the manufacturing technology;
- e) changes in the exports potential of the Russian producers of the good;
- f) changes in labor productivity in the branch of the Russian economy.

The material damage inflicted when such factors are available shall not be taken into account when the significant damage inflicted by the subsidized imports is being assessed.

11. The effect of the subsidized imports shall be assessed in respect to a branch of the Russian economy producing a similar good.

Should it be impossible to discern such a branch of the Russian economy on the basis of the statistical data on hand, the effect of the subsidized imports shall be assessed in respect to a branch of the Russian economy producing a group (may be a narrower group) of goods including a similar good in respect to which information is available.

The Determination of the Menace of a Material Damage to a Branch of the Russian Economy When Imports Are Subsidized

12. The determination of the menace of a material damage from subsidized imports shall be based on facts not only on forecast, probability appraisals and suppositions. The occurrence of a situation in which subsidized imports can in future cause a significant damage shall be obvious and inevitable.

13. The factors including, but no limited to, the following shall be taken into account while the menace of a substantial damage to a branch of the Russian economy is being assessed:

- a) the nature of the subsidy (subsidies) under consideration and the effect thereof on the trade;
- b) the dynamics of the growth of the subsidized imports testifying to a real possibility of its growing further in the future;
- c) the availability or apparent inevitability of an increase in the exports capability of the foreign exporter testifying to a possibility of an increase in the subsidized imports;
- d) the implementation of the subsidized imports at the prices that are going to have a suppressing effect or impeding influence on the prices of the Russian producers of the good, that being able to lead to further increase in the demand for the subsidized imported goods;
- e) a negative effect on the stock of the good being the subject matter of the investigation.

For the purpose of making the decision as to the availability of the menace of a material damage to the branch of the Russian economy it shall be necessary that all the said factors be discovered. While such a decision is being made other factors may also be taken into account.

The Procedure for Determining the Amount of the Subsidy per Unit of Good

14. For the purposes of determining the amount of the compensation duty introduced for the purposes of neutralizing the unfavorable consequences of subsidized imports of a good there shall be computed the amount of the subsidy of the foreign state (the alliance of foreign states) per unit of the good imported to the Russian Federation (ton, cubic meter, piece etc.).

15. When the amount of the subsidy is determined it shall be necessary to take into account the indicators characterizing inflation in the respective foreign state (alliance of foreign states) if the inflation rate is so high that it can distort the results so obtained.

16. The amount of the subsidy per unit of the good shall be determined proceeding from the amount of the expenses of the respective foreign state (alliance of foreign states) towards these purposes.

17. When the amount of the subsidy per unit of the good the value of such a good shall be computed as the total value of the sales of the legal entity being the beneficiary of the subsidy for 12 months preceding the receipt of the subsidy, provided the necessary data are available in respect thereto.

18. While the amount of the subsidy is being determined it shall be necessary to deduct any registration fee or other expenses incurred for the purpose of obtaining the subsidy from the total amount of the subsidy.

19. Should the subsidy be granted not in respect to a specific quantity of produced, issued, exported or carried good, the computation of the amount of the subsidy per unit of the good shall be effected by means of dividing the total amount of the subsidy by the volume of the output, sales or exports of the said good for the period for which the subsidy has been granted, if necessary, with the account taken of the share of the subsidized imported goods in the total output, sales or exports volume.

20. Should the subsidy be connected with the development or acquisition of fixed assets, the amount of the subsidy shall be computed by means of distributing the subsidy over the mean term of the depreciation of such fixed assets in the branch of economy under review in the respective foreign state (alliance of foreign states).

The computation of the amount of the subsidy per unit of the good shall also include the subsidies which had been granted for the acquisition of fixed assets prior to the beginning of the period covered by the investigation but the depreciation term of which had not yet expired.

21. While the amount of the subsidy is determined in the event when the value of the subsidy granted in different periods of time or for different purposes for one and the same good is different there can be applied mean weighed indicators of the amount of the subsidy in terms of the output, sales or exports.

22. When the subsidy is granted in the form of tax exemptions the value of the good shall be computed as based on the total sales thereof for the last 12 months in which the tax exemptions were applicable.

23. The subsidies granted within a year by different subsidizing bodies and/or for the implementation of different programs shall be summed up.